

(vi) Washing immediately in the nearest clean water if pesticides are spilled or sprayed on the body. As soon as possible, shower, shampoo, and change into clean clothes.

(3) Further training will be provided within 5 days.

* * * * *

(e) *Verification of training.* (1) Except as provided in paragraph (e)(2) of this section, if the agricultural employer assures that a worker possesses an EPA-approved Worker Protection Standard worker training certificate, then the requirements of paragraph (a) and (c) of this section will have been met.

* * * * *

[FR Doc. 95-10871 Filed 5-2-95; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 170

[OPP-250100A; FRL-4928-7]

RIN 2070-AC82

Pesticide Worker Protection Standard; Requirements for Crop Advisors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the 1992 Worker Protection Standard (WPS), by exempting qualified crop advisors from some requirements. EPA is also exempting persons from certain of the WPS requirements while performing crop advising tasks under the direct supervision of a certified or licensed crop advisor. This rule also establishes a grace period for all persons doing crop advising tasks to allow time to acquire certification or licensing.

EFFECTIVE DATE: This rule will become effective July 17, 1995.

FOR FURTHER INFORMATION CONTACT: Donald E. Eckerman, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Rm. 1121, Crystal Mall #2, 1921 Jefferson Davis Highway., Arlington, VA 22202. Telephone: 703-305-5062, eckerman.donald@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This **Federal Register** document discusses the background and events leading to this final rule amending the WPS; summarizes the public's comments on the provisions of the proposed amendments (60 FR 2827, Jan. 11,

1995); provides EPA's response to comments and final determination with respect to amendment of the crop advisor provisions of the WPS; and provides information on the applicable statutory and regulatory review requirements.

I. Statutory Authority

This rule is issued under the authority of section 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136w(a).

II. Background

In 1992, EPA revised the WPS (40 CFR part 170) (57 FR 38102, August 21, 1992), which is intended to reduce the risk of pesticide poisonings and injuries among agricultural workers who are exposed to pesticide residues and to reduce the risk of pesticide poisonings and injuries among pesticide handlers who may face more hazardous levels of exposure. The 1992 WPS superseded a rule promulgated in 1974 and expanded the WPS scope to not only include workers performing hand labor operations in fields treated with pesticides, but also to include workers in or on farms, forests, nurseries, and greenhouses, as well as pesticide handlers who mix, load, apply, or otherwise handle pesticides. The WPS contains requirements for pesticide safety training, notification of pesticide applications, use of personal protective equipment, restricted entry intervals following pesticide application, decontamination supplies and emergency medical assistance.

Under the 1992 WPS, crop advisors are defined by the tasks performed. Specifically, a person is a "crop advisor" when assessing pest numbers or damage, pesticide distribution, or the status or requirements of agricultural plants. The term does not include any person who is performing hand labor tasks. Crop consultants, pest control advisors, foresters, scouts and crop advisors while performing crop advising tasks on farms, nurseries, greenhouses and forests are included under the definition of crop advisor in the WPS.

During the 1992 rulemaking, the U.S. Department of Agriculture (USDA) expressed concerns about limiting the access of crop consultants and integrated pest management scouts to treated areas during and immediately following pesticide applications. In response to this concern, EPA included crop advisors in the definition of handlers. Thus, persons performing crop advisor tasks during pesticide application, and any restricted entry interval (REI), could enter treated areas as handlers. Employees of agricultural

establishments performing crop-advising tasks in a treated area within 30 days of the expiration of an REI are considered to be workers under 40 CFR part 170. Finally, employees of commercial pesticide handling establishments performing crop advisor tasks in a treated area after the expiration of an REI are not included in the scope of 40 CFR part 170.

Since the issuance of the 1992 WPS, farmworker groups have expressed an interest in enhancing specific protection measures, while grower groups, the National Association of State Departments of Agriculture and others have expressed an interest in addressing practical, operational concerns. The Agency received various requests and comments in the form of letters, petitions, and conversations at individual and public meetings to address concerns with the WPS, some specifically suggesting an exemption for crop advisors.

In response, EPA proposed five actions to revise elements of the WPS. These actions were published on January 11, 1995 (60 FR 2820), and proposed to: (1) Exempt those who perform crop advising tasks from certain requirements; (2) shorten the time periods before which employers must train workers and retrain workers and handlers in pesticide safety; (3) allow early entry to pesticide-treated areas to perform certain time-sensitive irrigation activities; (4) allow early entry to pesticide-treated areas to perform certain time-sensitive activities resulting in "limited contact" with pesticide-treated surfaces; and (5) allow workers to enter areas treated with certain lower risk pesticides after 4 hours rather than 12 hours.

This action addresses the proposed rulemaking (NPRM) to exempt those who perform crop advising tasks from certain requirements. The rule amendment established by this action will exempt certified or licensed crop advisors and persons under their direct supervision while performing crop advising tasks from certain handler requirements during the REI and certain worker requirements during the 30-day period after the expiration of the REI. However, crop advisors and persons under their direct supervision will not be able, under this exception, to enter the treated area until after pesticide application ends. If a person is a certified or licensed crop advisor, they will be exempt from the pesticide safety training required for workers and handlers.

Final determinations on the other four actions mentioned above are being

published elsewhere in this issue of the **Federal Register**.

III. Summary of the Final Rule Amendment

EPA is amending the WPS to exempt qualified crop advisors from some requirements. EPA is also exempting persons performing crop advising tasks from some of the WPS requirements, only if the tasks are performed under the direct supervision of a certified or licensed crop advisor. This rule also establishes a grace period for all persons while doing crop advising tasks in order to allow time to acquire certification or licensing.

EPA is including in new §§ 170.104 and 170.204 exemptions for knowledgeable and experienced crop advisors from the requirement of using personal protection equipment (PPE) (§ 170.240), knowledge of labeling and site specific information (§ 170.232), decontamination (§§ 170.150 and 170.250), and emergency assistance (§§ 170.160 and 170.260) requirements of the WPS. The crop advisor exemption applies only to individuals performing crop advising tasks in the treated area and only after application ends. Certified or licensed crop advisors may substitute pesticide safety training received during the certification or licensing program if such training is at least equivalent to the WPS training required by § 170.230.

A temporary grace period for all individuals while performing crop advisor tasks is established until May 1, 1996 to allow time for acquiring certification or licensing.

IV. EPA's Amendment Decision

Based on information submitted in comments and EPA's knowledge and understanding of crop advisor activities, EPA has concluded that an amendment exempting qualified crop advisors and persons they directly supervise is appropriate. Further, based on comments received, EPA believes that crop advisors, through their training and expertise, can assess which risk reduction measures are most appropriate depending on the situation. Finally, EPA believes that crop advisors can successfully communicate these judgments to persons they directly supervise, thereby assuring that both advisors and persons they directly supervise carry out their responsibilities safely.

Crop advisor tasks typically do not require extended periods of time in recently treated fields, thus lessening potential risk of exposure to pesticide residues through direct or incidental contact. Crop advisors commented that

in practice, it is typically necessary to wait a period of time after application to properly assess the effectiveness of the recommended treatment. EPA recognizes, however, that some situations may result in substantial exposure to pesticide residues, such as entering greenhouses shortly after fumigation, or entering treated areas during the first 4 hours after an application or before the ventilation criteria/inhalation exposure levels have been met. However, crop advisors, because of their knowledge, training and experience gained in the field, are in a unique position to understand pesticide-related hazards and protect themselves and persons they directly supervise from potential exposure. EPA expects that they would take appropriate protective steps, such as using appropriate PPE, or delaying entering into the treated area, especially where fumigants and double notification pesticides have been used.

The provisions set forth in the exemption provide protective measures for crop advisors and persons they directly supervise. The exemption does not allow entry into the treated area before the application ends and applies only to persons performing crop advisor tasks in the treated area. The crop advisor must make specific determinations regarding the appropriate PPE, appropriate decontamination supplies, and how to safely conduct the crop advisor tasks. The crop advisor must convey this information to each person under their direct supervision in a language that the person understands. Before entering a treated area, the crop advisor must inform, through an established practice of communication, each person under their direct supervision of the pesticide product and active ingredient(s) applied, method and time of application, and the restricted entry interval. The crop advisor must instruct each person whom they directly supervise regarding which tasks to undertake and how to contact the crop advisor. EPA believes that these terms will significantly limit exposure to pesticide residues, and consequently, the risk.

This exemption has substantial benefits for crop advisors by allowing them flexibility to make informed judgements regarding the need for protection on a case-by-case basis. The exemption also encourages the use of crop advisors, whose activities support agricultural productivity by maximizing the use of integrated pest management practices while minimizing chemical inputs, creating both environmental and economic benefits.

In summary, in deciding to grant this exemption to crop advisors and persons they supervise, EPA has weighed the risk of possible increased pesticide exposure and the benefits of crop advisor activities during the REI and the 30-day period following the expiration of the REI, and finds ample justification for this exemption for the reasons summarized in this preamble and discussed in detail in the response to comments.

V. Summary of Response to Comments

EPA received 169 comments referring to the crop advisor proposal. Comments were received from States, commodity groups, farmworker groups, and individuals.

In the January 11, 1995 document, EPA proposed to exempt certified or licensed crop advisors and their employees from several provisions of the pesticide WPS while performing crop advisor tasks. A temporary exemption until January 1, 1996 was proposed for all persons performing crop advisor tasks to allow time for crop advisors to obtain certification or licensing.

A. General

EPA proposed to exempt a qualified subset of crop advisors, those who are certified or licensed, from all requirements of the WPS. Acceptable certification or licensing would have to include training at least equivalent to the WPS handler training.

While many comments supported the proposal as written, a number of comments expressed concerns. Farmworker groups and some State Departments of Agriculture stated that crop advisors are not different enough from other workers or handlers and that different WPS requirements for them would not be justified. Representatives of and individual crop advisors stated that they can determine what PPE is needed according to the activities they plan to conduct while in a treated area and that they carry decontamination supplies, including water, with them.

EPA believes that, because of their training and experience, crop advisors typically have considerably greater knowledge about the potential health effects of pesticides and ways to mitigate exposure than many other agricultural workers. Consequently, they are, as a class, capable of judging what actions may safely be conducted within a pesticide-treated area subject to WPS requirements. EPA is persuaded that the exposure for crop advisor tasks is minimal and crop advisor tasks contribute to the maintenance and expansion of integrated pest

management practices in agriculture. EPA has concluded that it is appropriate to allow crop advisors to use their judgment and knowledge to determine whether a treated area may be safely entered during an REI and is granting an exemption from some of the WPS provisions to appropriate persons while they are performing crop-advising tasks.

Some comments requested clarification on the applicability of the exemption to crop advisors in a range of situations, for example, crop advisors employed by a single agricultural establishment, researchers, chemical company representatives, or agricultural extension personnel, etc. The exemption established by this action applies to crop advisors, who have demonstrated training and experience by completion of a crop advisor program, regardless of the source of compensation or employment. The WPS is not applicable to a person or establishment providing services (including crop advising services) on an agricultural establishment without compensation from the agricultural establishment for those services. For example, the WPS would not apply to extension agents, university researchers and chemical company representatives providing recommendations to growers where the agricultural establishment is not providing compensation for those recommendations.

B. Scope of the Exemption

EPA has been persuaded by comments that a complete exemption from all the WPS provisions at all times would not be reasonable. The potential for exposure, and thus risk, is at its highest during pesticide application. Consequently, the exemption will not apply during pesticide application. During the REI and the 30 days following the REI, qualified persons performing crop advising tasks would not be required to comply with PPE (§ 170.240), knowledge of labeling and site specific information (§ 170.232), decontamination (§§ 170.150 and 170.250), and emergency assistance (§§ 170.160 and 170.260) requirements of the rule.

The comments received also persuaded EPA that the exemption should be applicable only when performing crop advising tasks as defined in the rule. Accordingly, section §§ 170.104 and 170.204 make it explicit that the exemption is available only when crop advising tasks are being performed in the treated area, and only after application ends.

Some comments expressed concern that the crop advisor would not know what applications had been made on the

agricultural establishment if this exemption were established. It should be noted that § 170.124 requires that agricultural employers notify commercial pesticide handling establishments whenever handlers (including crop advisors) employed by commercial pesticide handling establishments are performing handling tasks (including crop advising tasks) on the agricultural establishment. EPA believes that this requirement of agricultural establishment owners will result in adequate information being provided to crop advisors since the exemption for crop advisors does not eliminate the owner's responsibility under the notification requirement.

C. Certification or Licensing

EPA proposed that, to be eligible for the exemption, crop advisors should be required to obtain certification or licensing from a program administered or approved by a State, Tribal or Federal agency having jurisdiction over such licensing or certification. The certification or licensing program would have to include pesticide safety training at least equivalent to the handler training required by the WPS.

Many comments agreed that the proposed mechanism for eligibility for the exemption was appropriate. Some comments suggested certified applicator licensing as being sufficient. Still others suggested that EPA recognize certain national programs, such as the American Society of Agronomy (ASA) Certified Crop Advisor and the National Alliance of Independent Crop Consultants (NAICC) Certified Professional Crop Consultant programs. Some comments stated that crop advisor certification or licensing is not currently available in all States.

EPA expects each State will determine its own criteria for acceptable programs which will qualify crop advisors for the exemption. States are given this flexibility and authority because a wide range of certifying programs are available across the country. EPA is requiring crop advisor certification programs to contain pesticide safety training at least equivalent to WPS handler training. States may consider and EPA expects and suggests, using a written test for competency, a requirement for experience and continuing education, and a specified renewal period. Most State certified applicator programs would not meet these criteria because EPA does not require work experience for pesticide applicator certification, and a written examination is only required for the initial certification of commercial applicators. However, some

States may go beyond the minimum EPA certified applicator requirements and require the testing and experience so that they would meet EPA's suggested crop advisor certification standards.

EPA agrees that a wide range of crop advisor programs may be appropriate for the exemption and has revised and clarified the text in §§ 170.104, 170.130, 170.204, and 170.230 to allow a number of crop advisor programs to be acceptable. EPA expects to approve requests from several national crop advisor certification programs, but will permit States to approve other programs they deem acceptable. EPA or a State may approve (or disapprove) a certification program by issuing to it a letter acknowledging that its content and requirements are (or are not) sufficient to qualify for the WPS crop advisor exemption.

D. Employees

EPA also proposed exempting employees of certified or licensed crop advisors from WPS requirements, except for WPS pesticide safety training.

While most comments supported inclusion of employees, some raised concerns about removing protections for employees. They expressed concern that certified or licensed crop advisors could not adequately transfer their knowledge and experience to employees, especially if the employees were working independently from the crop advisor (e.g., in remote locations). Concern also was raised that crop advising employees are likely to be less educated and experienced than professional crop advisors. Finally, some comments found the proposal unclear regarding who is considered an employee and assumed that the exemption would apply to individuals when performing other than crop advising tasks and therefore could be abused by employers to avoid compliance with the WPS protections.

EPA agrees that it must be clear that any crop advisor exemption applies only to individuals when they are performing crop advising tasks and has revised §§ 170.104 and 170.204 accordingly.

EPA believes that, for this exemption, the employment relationship between crop advisors and assistants is not as critical as the supervisory relationship between them that allows the imparting of knowledge and guidance. Therefore, EPA has decided to refer to employees as "persons under the direct supervision" of a crop advisor. Since EPA believes that the important relationship between crop advisors and assistants is one that allows the imparting of knowledge and guidance,

the Agency is concerned that crop advisors must be able to transfer their knowledge and guidance effectively to assistants, particularly if they are not in the same location. Therefore, EPA has established in §§ 170.104 and 170.204 specific conditions in this amendment to assure that crop advisors provide persons they supervise with adequate direction.

E. Grace Period

EPA also proposed to exempt all individuals performing crop advisor activities from all the WPS requirements until January 1, 1996, to allow time for individuals to obtain certification or licensing. After January 1, 1996, only crop advisors who are certified or licensed and employees under their direct supervision would be exempt.

A number of comments pointed out that examinations for certification programs are scheduled infrequently, often only twice a year, and that the January 1, 1996, date would be difficult to meet since one of 1995's exams may have already taken place. One comment suggested a 3-month temporary exemption to minimize the time that all crop advisors would be working without benefit of the WPS protections.

EPA believes that a grace period until May 1, 1996, is a reasonable period to allow crop advisors to obtain certification or licensing. Sections 170.104(c) and 170.204(c) provide that this grace period will apply to all individuals while performing crop advising tasks until May 1, 1996.

VI. Reevaluation of Crop Advisor Exemption

The Agency is adopting this amendment in order to provide the flexibility to crop advisors under the WPS. As discussed more fully above, the Agency believes that any added risks associated with pesticide exposure of those performing crop advisor activities will be outweighed by the benefits of this action. The Agency intends over the next growing seasons to collect information to evaluate the effectiveness of this action. In particular, EPA is interested in determining whether the conditions imposed by this action successfully protect crop advisors and persons under their direct supervision against pesticide poisonings. EPA is also interested in better characterizing the circumstances in which this exclusion is being used and in understanding whether the exclusion addresses the practical problems of performing crop advising tasks adequately. Finally, EPA would like to obtain information on the extent of compliance with the

conditions in the exclusion and any practical problems with enforcement.

To obtain a better understanding of the implementation and impacts of this exclusion, EPA will work with USDA and states to gather relevant information. The Agency will hold public meetings in agricultural areas to provide those directly affected by the WPS, growers, enforcement staff, and agricultural workers, an opportunity to comment on these actions and the WPS rule in general. As appropriate, EPA may conduct surveys and review incident data to assess the impact of the exemption. The Agency invites any interested person who has concerns about the implementation of this action to send comments to the Agency at the address listed under the **ADDRESSES** section of this document.

VII. Technical Amendments

EPA is revising §§ 170.202 and 170.102, which exempt owners of agricultural establishments from subparts B and C requirements for workers and handlers, by reorganizing the paragraphs into three sections: for applicability (§§ 170.102 and 170.202), exceptions (§§ 170.103 and 170.203), and exemptions (§§ 170.104 and 170.204). The existing exemptions for agricultural owners are included in the new §§ 170.104 and 170.204. No substantive change has been made to the exemptions for agricultural establishment owners.

VIII. Public Docket

A record has been established for this rulemaking under docket number OPP-250100A. This record is available for public inspection from 8 a.m. to 4:30 p.m., Monday through Friday. The public record is located in Rm. 1132, Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Written requests should be mailed to: Public Response and Program Resources Branch (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

IX. Statutory Review

As required by FIFRA Section 25(a), this rule was provided to the USDA, and to Congress for review. EPA consulted informally with USDA during the development of the final rule and, through this exchange, addressed all of the Department's comments. The final rule was provided formally to USDA, as required by FIFRA. The Department of Agriculture had no comment on the final rule. The FIFRA Scientific Advisory Panel waived its review.

X. Regulatory Assessment Requirements

A. Executive Order 12866

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that this is a "significant regulatory action" because it raises potentially novel legal or policy issues. This action was submitted to the Office of Management and Budget (OMB) for review under the Executive Order. Any comments or changes made during OMB review, have been documented in the public record.

In addition, the Agency estimates that the total potential cost savings associated with the amendment ranges from \$20 to \$23 million over a 10-year period, with a single crop advisor saving approximately \$1,150 over a 10-year period.

B. Executive Order 12898

Executive Order 12898 (environmental justice) was taken into account in developing the WPS amendments.

C. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, EPA has assessed the effects of this regulatory action on State, local, and tribal governments, and the private sector. This action does not result in the expenditure of \$100 million or more by any State, local or tribal governments, or by anyone in the private sector. The cost savings associated with this action are described Unit X.A. above.

In addition to the consultations prior to proposal, EPA has had several informal consultations regarding the proposed rule with some States through the EPA regional offices and at regularly scheduled State meetings. No significant issues or information were identified as a result of EPA's discussion with the States.

D. Regulatory Flexibility Act

This rule was reviewed under the provisions of section 3(a) of the Regulatory Flexibility Act, and it was determined that this rule would not have an adverse impact on any small entities. The rule will provide cost savings to an estimated 2,500 to 5,000 crop advisors and an additional 15,000 employees of crop advisors who will be affected. I therefore certify that this regulatory action does not require a separate Regulatory Impact Analysis under the Regulatory Flexibility Act.

E. Paperwork Reduction Act

EPA has determined that there are no information collection burdens under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., associated with the requirements contained in this rule.

List of Subjects in 40 CFR Part 170

Environmental protection,
Administrative practice and procedure,
Occupational safety and health,
Pesticides and pests.

Dated: April 26, 1995.

Carol M. Browner,

Administrator.

Therefore, 40 CFR part 170 is amended as follows:

PART 170—[AMENDED]

1. The authority citation for part 170 continues to read as follows:

Authority: 7 U.S.C. 136w.

§ 170.103 [Redesignated from § 170.102]

2. Section 170.102 is partially designated as § 170.103 and entitled Exceptions. Paragraph (b) introductory text and paragraphs (b)(1) through (10) are redesignated as § 170.103 introductory text and paragraphs (a) through (j), respectively. The remainder of § 170.102 is revised to read as follows:

§ 170.102 Applicability of this subpart.

Except as provided by §§ 170.103 and 170.104, this subpart applies when any pesticide product is used on an agricultural establishment in the production of agricultural plants.

3. New § 170.104 is added to read as follows:

§ 170.104 Exemptions.

The workers listed in this section are exempt from the specified provisions of this subpart.

(a) *Owners of agricultural establishments.* (1) The owner of an agricultural establishment is not required to provide to himself or members of his immediate family who are performing tasks related to the production of agricultural plants on their own agricultural establishment the protections of:

- (i) Section 170.112(c)(5) through (9).
- (ii) Section 170.112(c)(5) through (9) as referenced in §§ 170.112(d)(2)(iii) and 170.112(e).
- (iii) Section 170.120.
- (iv) Section 170.122.
- (v) Section 170.130.
- (vi) Section 170.135.
- (vii) Section 170.150.

(viii) Section 170.160.

(2) The owner of the agricultural establishment must provide the protections listed in paragraph (a)(1)(i) through (viii) of this section to other workers and other persons who are not members of his immediate family.

(b) *Crop advisors.* (1) Provided that the conditions of paragraph (b)(2) of this section are met, a person who is certified or licensed as a crop advisor by a program acknowledged as appropriate in writing by EPA or a State or Tribal lead agency for pesticide enforcement, and persons performing crop advising tasks under such qualified crop advisor's direct supervision, are exempt from the provisions of:

- (i) Section 170.150.
- (ii) Section 170.160.

A person is under the direct supervision of a crop advisor when the crop advisor exerts the supervisory controls set out in paragraphs (b)(2)(iii) and (iv) of this section. Direct supervision does not require that the crop advisor be physically present at all times, but the crop advisor must be readily accessible to the employees at all times.

(2) Conditions of exemption. (i) The certification or licensing program requires pesticide safety training that includes, at least, all the information in § 170.230(c)(4).

(ii) Applies only when performing crop advising tasks in the treated area.

(iii) The crop advisor must make specific determinations regarding the appropriate PPE, appropriate decontamination supplies, and how to conduct the tasks safely. The crop advisor must convey this information to each person under his direct supervision in a language that the person understands.

(iv) Before entering a treated area, the certified or licensed crop advisor must inform, through an established practice of communication, each person under his direct supervision of the pesticide product and active ingredient(s) applied, method of application, time of application, the restricted entry interval, which tasks to undertake, and how to contact the crop advisor.

(c) *Grace period for persons performing crop advisor tasks who are not certified or licensed.* (1) Provided that the conditions of paragraph (c)(2) of this section are met, a person who is neither certified nor licensed as a crop advisor and any person performing crop advising tasks under his direct supervision is exempt until May 1, 1996, from the requirements of:

- (i) Section 170.130.
- (ii) Section 170.150.
- (iii) Section 170.160.

(2) Conditions of exemption. (i) Applies only when the persons are performing crop advising tasks in the treated area.

(ii) The crop advisor must make specific determinations regarding the appropriate PPE, appropriate decontamination supplies, and how to conduct the tasks safely. The crop advisor must convey this information to each person under his direct supervision in a language that the person understands.

(iii) Before entering a treated area, the crop advisor must inform, through an established practice of communication, each person under his direct supervision of the active ingredient, method of application, time of application, the restricted entry interval, which tasks to undertake, and how to contact the crop advisor.

4. Section 170.130 is amended by revising paragraph (b) to read as follows:

§ 170.130 Pesticide safety training for workers.

* * * * *

(b) *Exceptions.* The following persons need not be trained under this section:

(1) A worker who is currently certified as an applicator of restricted-use pesticides under part 171 of this chapter.

(2) A worker who satisfies the training requirements of part 171 of this chapter.

(3) A worker who satisfies the handler training requirements of § 170.230(c).

(4) A worker who is certified or licensed as a crop advisor by a program acknowledged as appropriate in writing by EPA or a State or Tribal lead agency for pesticide enforcement, provided that a requirement for such certification or licensing is pesticide safety training that includes all the information set out in § 170.230(c)(4).

* * * * *

§ 170.203 [Redesignated from § 170.202]

5. Section 170.202 is partially redesignated as § 170.203 entitled Exceptions. Paragraph (b) introductory text and paragraphs (b)(1) through (9) are redesignated as § 170.203 introductory text and paragraphs (a) through (i), respectively. The remainder of § 170.102 is revised to read as follows:

§ 170.202 Applicability of this subpart.

Except as provided by §§ 170.203 and 170.204, this subpart applies when any pesticide is handled for use on an agricultural establishment.

6. New § 170.204 is added to read as follows:

§ 170.204 Exemptions.

The handlers listed in this section are exempt from the specified provisions of this subpart.

(a) Owners of agricultural establishments.

(1) The owner of an agricultural establishment is not required to provide to himself or members of his immediate family who are performing handling tasks on their own agricultural establishment the protections of:

- (i) Section 170.210(b) and (c).
- (ii) Section 170.222.
- (iii) Section 170.230.
- (iv) Section 170.232.
- (v) Section 170.234.
- (vi) Section 170.235.
- (vii) Section 170.240(e) through (g).
- (viii) Section 170.250.
- (ix) Section 170.260.

(2) The owner of the agricultural establishment must provide the protections listed in paragraphs (a)(1)(i) through (ix) of this section to other handlers and other persons who are not members of his immediate family.

(b) Crop advisors. (1) Provided that the conditions of paragraph (b)(2) of this section are met, a person who is certified or licensed as a crop advisor by a program acknowledged as appropriate in writing by EPA or a State or Tribal lead agency for pesticide enforcement, and persons performing crop advising tasks under such qualified crop advisor's direct supervision, are exempt from the provisions of:

- (i) Section 170.232.
- (ii) Section 170.240.
- (iii) Section 170.250.
- (iv) Section 170.260.

A person is under the direct supervision of a crop advisor when the crop advisor exerts the supervisory controls set out in paragraphs (b)(2)(iv) and (v) of this section. Direct supervision does not require that the crop advisor be physically present at all times, but the crop advisor must be readily accessible to the employees at all times.

(2) Conditions of exemption. (i) The certification or licensing program requires pesticide safety training that includes, at least, all the information in § 170.230(c)(4).

(ii) No entry into the treated area occurs until after application ends.

(iii) Applies only when performing crop advising tasks in the treated area.

(iv) The crop advisor must make specific determinations regarding the appropriate PPE, appropriate decontamination supplies, and how to conduct the tasks safely. The crop advisor must convey this information to each person under his direct supervision in a language that the person understands.

(v) Before entering a treated area, the certified or licensed crop advisor must inform, through an established practice of communication, each person under his direct supervision of the pesticide products and active ingredient(s) applied, method of application, time of application, the restricted entry interval, which tasks to undertake, and how to contact the crop advisor.

(c) Grace period for persons performing crop advisor tasks who are not certified or licensed. (1) Provided that the conditions of paragraph (c)(2) of this section are met, a person who is neither certified nor licensed as a crop advisor and any person performing crop advising tasks under his direct supervision is exempt until May 1, 1996, from the requirements of:

- (i) Section 170.230.
- (ii) Section 170.232.
- (iii) Section 170.240.
- (iv) Section 170.250.
- (v) Section 170.260.

(2) Conditions of exemption. (i) No entry into the treated area occurs until after application ends.

(ii) Applies only when the persons are performing crop advising tasks in the treated area.

(iii) The crop advisor must make specific determinations regarding the appropriate PPE, appropriate decontamination supplies, and how to conduct the tasks safely. The crop advisor must convey this information to each person under his direct supervision in a language that the person understands.

(iv) Before entering a treated area, the crop advisor must inform, through an established practice of communication, each person under his direct supervision of the pesticide products and active ingredient(s) applied, method of application, time of application, the restricted entry interval, which tasks to undertake, and how to contact the crop advisor.

7. In § 170.230, by revising the section title and paragraph (b) to read as follows:

§ 170.230 Pesticide safety training for handlers.

* * * * *

(b) Exceptions. The following persons need not be trained under this section:

(1) A handler who is currently certified as an applicator of restricted-use pesticides under part 171 of this chapter.

(2) A handler who satisfies the training requirements of part 171 of this chapter.

(3) A handler who is certified or licensed as a crop advisor by a program acknowledged as appropriate in writing

by EPA or a State or Tribal lead agency for pesticide enforcement, provided that a requirement for such certification or licensing is pesticide safety training that includes all the information set out in § 170.230(c)(4).

[FR Doc. 95-10872 Filed 5-2-95; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 170

[OPP-250104; FRL-4950-9]

Technical Amendment, Addition of Table of Exception Decisions to Early-Entry Prohibition, Worker Protection Standard; Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In the Notices section of this **Federal Register**, EPA is providing notice for two additional administrative exceptions to the general prohibition on early entry into pesticide treated areas contained in the Worker Protection Standard (WPS) issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The exceptions allow, under specific conditions, early entry for workers to perform irrigation and limited contact tasks. Both exceptions are in response to requests the Agency received from the agricultural community. To ensure that the regulated community is aware of these and future administrative exceptions to the early-entry prohibition, EPA is amending the WPS to add a new § 170.112(e)(7) that informs the regulated community where to locate **Federal Register** notices that set forth the terms and conditions of the administrative exceptions.

EFFECTIVE DATE: May 3, 1995.

FOR FURTHER INFORMATION CONTACT: Sara Ager or Linda Strauss, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: 1921 Jefferson Davis Highway, Rm. 1121, Crystal Mall 2, Arlington, VA 22202, Telephone: 703-305-7666, ager.sara@epamail.epa.gov or strauss.linda@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:**I. Background and Purpose**

EPA issued the WPS on August 21, 1992 (57 FR 38102) (40 CFR part 170). The WPS includes a prohibition (§ 170.112) against routine early entry into pesticide treated areas during restricted-entry interval (referred to as "early entry"). Section 170.112(e) of the